

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1433, 24.29.1534,) PROPOSED AMENDMENT
24.29.1538, and 24.29.1591, related)
to workers' compensation medical)
service fee schedules and utilization)
and review of medical services)

TO: All Concerned Persons

1. On May 22, 2015, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the Second Floor Conference Room of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 18, 2015, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the fee schedules provided by this rule to determine the reimbursement for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the following elements which apply, unless a special code or description is otherwise provided by rule listed in 39-71-704, MCA, and the following:

~~(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule, based on:~~

~~(i) CMS version 30 for dates of discharge from July 1, 2013 to September 30, 2013;~~

~~(ii) CMS version 31 for dates of discharge from October 1, 2013, through September 30, 2014; and~~

~~(iii) Pursuant to 39-71-704, MCA, the MS-DRG in effect on October 1 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(b) The Montana Hospital Outpatient and ASC Fee Schedule Organized by APC. Pursuant to 39-71-704, MCA, the APC in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(c) The Montana Hospital Outpatient and ASC Fee Schedule Organized by CPT/HCPCS. Pursuant to 39-71-704, MCA, the CPT/HCPCS in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(d) The Montana CCI Code Edits listing with the Medically Unlikely Edits (MUE). Pursuant to 39-71-704, MCA, the CCI Codes Edits and MUE in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(e) The Montana CCR and other Montana CCR-based Calculations, based on CMS version 30 for dates of discharge from July 1, 2013 to September 30, 2013 Pursuant to 39-71-704, MCA, the CCR in effect on October 1 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(f) and (g) remain the same, but are renumbered (a) and (b).~~

~~(h)(c)~~ The base rates and conversion formulas established by the department:

(i) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set for 2013," for services provided from July 1, 2013 through June 30, 2014; and

(ii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014," for services provided from July 1, 2014, through June 30, 2015; and

(iii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2015."

(2) through (10) remain the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective July 1, 2013 through June 30, 2014, the base rate is \$7,944; and

(ii) Effective July 1, 2014 through June 30, 2015, the base rate is \$7,984.

(iii) Effective July 1, 2015, the base rate is \$8,076.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$3,992~~ \$4,038, which is the base rate of ~~\$7,984~~ \$8,076 multiplied by 0.5.

(c) through (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The annual department-set base rate for outpatient service at acute care hospitals is:

(i) \$107 from July 1, 2013 through June 30, 2014; and

(ii) \$109 ~~on or after from~~ from July 1, 2014 through June 30, 2015; and

(iii) \$111 on or after July 1, 2015.

(b) The annual department-set base rate for ASCs, which is 75 percent of the hospital outpatient base rate, is:

(i) ~~\$80, from July 1, 2013 through June, 30, 2014, which is 75 percent of the hospital outpatient base rate; and~~

(ii) \$82, on or after from July 1, 2014, which is 75 percent of the hospital outpatient base rate through June 30, 2015; and

(iii) \$83, on or after July 1, 2015.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1433. In addition, there is reasonable necessity to update the instruction set as part of the annual update.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES

PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013. An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements, ~~which apply unless a special code or description is otherwise provided by rule listed in 39-71-704, MCA, and the following:~~

~~(a) the CPT codes, including the HCPCS Level II codes. Pursuant to 39-71-704, MCA, the CPT and HCPCS in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(b) the RVU given in the RBRVS, based on the January 1, 2013 version of the RBRVS for services provided from July 1, 2013 to March 30, 2014. Pursuant to 39-71-704, MCA, the RVU given in the RBRVS in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(c) the Correct Coding Initiative (CCI) Edits, including the Medically Unnecessary Edits (MUE). Pursuant to 39-71-704, MCA, the CCI Codes Edits and MUE in effect on March 31 of each year are to be applied to a medical service for billing and reimbursement purposes;~~

~~(d)~~(a) the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions set affecting the determination of individual fees apply. A copy of the instruction set may also be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011;

(i) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set for 2013" applies to services provided from July 1, 2013 through June 30, 2014; ~~and~~

(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services ~~on or after~~ provided from July 1, 2014 through June 30, 2015; and

(iii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2015" applies to services provided on or after July 1, 2015.

(e) through (h) remain the same, but are renumbered (b) through (e).

(2) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1534. In addition, there is reasonable necessity to update the instruction set as part of the annual update in order to adopt a revised Professional Fee Schedule each year for the purpose of incorporating all annual changes to CPT codes, RBRVS, CCI edits, including medically unnecessary edits (MUE), conversion factors, modifiers and Montana unique codes.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.

(2) The conversion factors established by the department for goods and services, other than anesthesia services are:

(a) \$63.45 from January 1, 2008 through December 31, 2008;

(b) \$65.28 from January 1, 2009 through June 30, 2013;

(c) \$60.52 from July 1, 2013 through June 30, 2014; ~~and~~

(d) \$59.72 ~~on or after~~ from July 1, 2014 through June 30, 2015; and

(e) \$61.49 on or after July 1, 2015.

(3) The conversion factors established by the department for anesthesia services are:

(a) \$57.20 from January 1, 2008 through December 31, 2008;

(b) \$61.98 from January 1, 2009 through December 31, 2009;

(c) \$60.97 from January 1, 2010 through June 30, 2013;

(d) \$61.40 from July 1, 2013 through June 30, 2014;

(e) \$62.98 ~~on or after~~ from July 1, 2014 through June 30, 2015; and

(f) \$65.63 on or after July 1, 2015.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1538.

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The applicable utilization and treatment guidelines are available electronically at the web site: <http://www.mtguidelines.com>; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011. The Montana Guidelines incorporated by reference apply as follows:

(a) for medical services provided from July 1, 2011 through June 30, 2014: "Montana Utilization and Treatment Guidelines, 1st edition, 2011"; and
(b) for medical services provided ~~on or after~~ July 1, 2014 through June 30, 2015: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014-"; and
(c) for medical services provided on or after July 1, 2015: "Montana Utilization and Treatment Guidelines, 3rd edition, 2015."

(2) ~~The guidelines include Montana Guidelines~~ consist of the following nine chapters and General Guideline Principles which are included at the beginning of each chapter:

(a) through (3) remain the same.

(a) In cases where treatment(s) or procedure(s) are recommended by the Montana Guidelines, and treatment is provided ~~is in~~ accordance with the guidelines, prior authorization is unnecessary unless the Montana Guidelines specify otherwise.

(b) The department recognizes that medical treatment may include deviations from the Montana Guidelines as individual cases dictate. The provider or interested party shall follow the procedure for prior authorization under ARM 24.29.1593 for cases in which treatments or procedures are requested that ~~is~~ are:

(i) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by law to annually review the Utilization and Treatment Guidelines, and to make updates as appropriate, there is reasonable necessity to amend ARM 24.29.1591. The department has consulted with health care providers, as required by statute, and based upon those consultations and recommendations, proposes to update the Montana Utilization and Treatment Guidelines for 2015.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena,

MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov, and must be received no later than 5:00 p.m., on May 29, 2015.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

6. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

7. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice do not have a significant and direct impact upon small businesses.

8. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 20, 2015.